

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 66 OF 2006

IN

WRIT PETITION NO. 5845 OF 1999

R.K. Shinde

of Pune, Indian inhabitant

having address at, C/o. S.131,

Shinde Vasti, Hadapsar,

Pune 411 013.

2. M.S. Desai,

of Pune, Indian inhabitant

having address at, C/o. S.131,

Shinde Vasti, Hadapsar,

Pune 411 013.

3. Shri B. D. Hazare

4. Shri Dhume B.S.

5. Shri A.S. Karpe

6. Shri S.T. Holkar
7. Shri S.N. Kakde
8. Shri S.S. Moze (deceased)
 - 8a. Chhaya Suresh Moze(Legal heir of Appellant No. 8)
9. Shri S.A. Memane
10. Shri P.V. Vanarse
11. Shri V.M. Ghodke
12. Shri N.L. Raskar
13. Shri S.N. Pawar
14. Shri S.R. Alhat
15. Shri R.D. Waghmare
16. Shri M.L. Kamble
17. Shri P.V. Rane
18. Shri A.V. Wambure
19. Shri S.L. Warude
20. Shri R.B. Jadhav
21. Shri D.E. Jawalkar
22. Shri D.G. Pokharkar

23. Shri S.D. Nawagire

24. Shri S.M. Inamdar

25. Shri G.M. Sutan

26. Shri C.N. Khopkar

27. Shri R.V. Pataskar

28. Shri D.M. Shinde

29. Shri P.F. Lazar

30. Shri M.H. Zambare

31. Shri B.H. Vairagar

32. Shri S. Dhokale

33. Shri N.M. Sayyed

34. Shri J.N. Mahadik

35. Mrs. S.C. Choundhe

36. Mrs. M.N. Fullelu

37. Shri P.H. Yadav

38. Mrs. L.L. Khenat

Being all of Pune, Indian

inhabitants having their

address at, S. No. 131,

Shinde Vasti, Hadapsar,

Pune 411 013.

.. Appellants.
(Orig. Respondents
No. 1 to 15 & 18 to 36
38, 40)

vs.

1. Shekoba Auto Pvt. Ltd.,

A Company incorporated

under Companies Act, 1956,

having its address at 68, Hadapsar

Industrial Estate, Pune 411 013.

2. Neotronics (P.) Limited

Hadapsar Industrial

Estate, Pune 411 013. .. Respondents.
(Orig. Respondent No.41.

Mr. S.J. Deshmukh with Ms. N.D. Buch, Mr. H.D. Buch,
Mr. [S.K.More](#) and Mr. B.B. Dholkia
for Appellants.

Mr. C.U. Singh, Sr. Advocate with Mr. T.R. Yadav
i/by K.S. Bapat for Respondent No.1.

Mr. N.G. Helekar for Respondent No. 2.

CORAM : J.N. PATEL &

A.A. SAYED, JJ.

JUDGEMENT RESERVED ON 20/07/2007

JUDGEMENT DELIVERED ON 26/11/2007.

ORAL JUDGMENT (Per J.N. Patel, J.)

By this Letters Patent Appeal the Petitioners, employees of the respondent, have impugned the judgment and order dated 3rd March, 2006 passed by the learned Single Judge of this Court in Writ Petition No. 5845 of 1999 which came to be filed by the respondent employer challenging the decision of the Industrial Court, Pune in Complaint (ULP) No. 70 of 1999 holding that the employer had committed unfair labour practices under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU & PULP Act, 1971)

thereby directing the employer to continue the respondents employees 1 to 40 in their services and to pay each of the respondents Rs. 1000/- towards compensation and a further sum of Rs. 1000/- each towards cost. The Industrial Court, inter alia, held that Petitioner and the Respondent No. 2 were functionally integrated and together employed more than 100 employees and, therefore, the provisions of Chapter VB of the Industrial Disputes Act, 1947 were applicable and as the Petitioner has failed to obtain permission of the appropriate government, it has committed unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971.

2. The complainant employees had filed a complaint against the respondent employer, namely, Shekoba Auto Private Limited and Neotronics (P) Ltd., It was their case that the respondent employers have two units registered under the Factories Act, 1948

located in the same building. Originally, the employer of the complainant employees had a manufacturing unit known as Electro Components Company in the same premises. It is somewhere on or about 24th September, 1978 the said M/s. Electro Components Company got bifurcated in two units and informed the employees that their services stood transferred to another unit with effect from 1st November, 1978 on the same terms and conditions without break. It is their case that Auto Components Company was changed to Shekoba Auto (P) Ltd., and the name of Electro Components Company was changed to Neotronics (P) Ltd., i.e., the original respondent no. 2 and the employees of Electro Components Company were absorbed in these two companies. According to the complainant employees both respondent nos. 1 and 2 are very closely knit units and their production is interchangeable and the employees of respondent nos. 1 and 2 are frequently asked to work in each other's

factory and the wages are adjusted in their books. It is also their case that the sales and purchases are common. The directors are also common and there is one recognised union in both the respondents i.e. Sarva Shramik Sanghatana and that the negotiations and settlements for employees of both the units are held in common meeting though separate settlements are signed and, therefore, according to the complainant employees there is functional integrality between the respondent no. 1 and 2. It is their case that respondent no. 1 employs 40 employees and 4 staff whereas the respondent no. 2 employs 69 employees. Both of them taken together are more than 100 employees and, therefore, the provisions of Chapter VB of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) are applicable. The respondent no. 1 i.e. Shekoba Auto (P) Ltd., issued a letter dated 17th March, 1999 to all the complainant employees retrenching the complainants from 21st march, 1999 and this led to the

challenge of their retrenchment by filing a complaint of unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971.

3. It was the case of the complainant employees that the reasons for retrenchment are patently false, the calculation of compensation, service are also incorrect. No seniority list was displayed seven days prior to retrenchment so also no permission to retrench the employees under Section 25-N of the Industrial Disputes Act, 1947 was obtained. Hence there is non-compliance of the provisions of Sections 25-F, 25-G and 25-N of the Industrial Disputes Act, 1947 and consequently there is unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971. According to the complainant employees, respondent no. 1 has sent a letter to the complainants on 19th March 1999 stating that they are stopping production and, therefore, their action is not bonafide and it is

apprehended that respondent no. 1 wants to get rid of the senior employees and re-start production with the help of new recruits. Therefore, the proposed retrenchment is malafide. It was also their case that the respondent no. 1 has opened another unit at Hubli manufacturing the same product and they want to shift their assets to Hubli which also shows malafides on their part. Therefore, they sought a relief in the nature of declaration that the respondent nos. 1 and 2 have engaged in unfair labour practices and that they may be directed not to give effect to the notice of retrenchment issued to the complainant employees and continue to employ them.

4. In reply, the Respondent No. 1 took the stand that the complaint is neither true nor bonafide nor it is legal. It was their case that in April, 1972, a partnership concern Electro Components Company was established. Auto Components Company, a new

partnership firm came into being in November, 1978. Electro Components Company had decided to discontinue manufacture of auto condensers from their product line and this product was taken up by the new firm Auto Components Company and later on developed other products of its own. Majority of products of Auto Components Company were related to the automobile industry, whereas the product manufactured by Electro Components Company related to electronic industry. Though they accepted that Auto Components Company also took over the workmen working in Auto Condenser Section of Electro Components Company, who were willing to change over, but this was pursuant to letter dated 24th September, 1978 filed by the complainants themselves which clearly indicates the change over to the new employer on their own free will and this is how the Auto Components Company took over the employees of Electro Components Company. Electro Components

Company thereafter totally discontinued manufacture of this product. According to the respondent employer the partnership firm Auto Components was converted into a private limited company under the name and style of Shekoba Auto Private Limited on 6th June, 1985. They have taken up new employees in addition to those who were taken over from Electro Components Company and in March, 1999 the Respondent No. 1 Shekoba Auto Pvt. Ltd., has discontinued its manufacturing activities.

5. As regards the claim of the complainants that the respondent Nos. 1 and 2 are very close knit and the product is interchangeable, it is the case of the respondents that the product of Respondent nos. 1 and 2 are different and were not interchangeable as alleged. Their clients are separate, their raw-materials are separate and by no stretch of imagination can the product be construed to be interchangeable. According

to them, even the directors are different and workers of Respondent Nos. 1 and 2 were not interchangeable though admittedly they are members of a common union, namely, Neotronic Pvt. Ltd., and Shekoba Auto Pvt. Ltd., Kamgar Sanghatana and that is how a common group of union activists interact with the management of both the companies. However, the demands, etc., are submitted separately and they are discussed by the common group with the management of Respondent Nos. 1 and 2 and the settlements were arrived at separately, which goes to show that the union and the concerned Government Agencies have accepted the fact that two companies are separate legal entities and it is specifically stated that the complaint is false, frivolous and made with the sole aim of misleading the Court and there is absolutely no functional integrality as alleged as the factory licences, Central Excise registration, Sales Tax registrations, Certificate of Incorporation under the Companies Act,

E.S.I., registration numbers, Provident Fund numbers, M.S.E.B., power sanction/supply etc., are distinctly separate. The Respondents also denied the fact that they are together employing 130 employees. On the other hand, it is their case that the Respondent No. 1 had 44 employees and Respondent No. 2 had 69 employees. Therefore, this by itself establishes the position that Chapter VB of the Industrial Court, 1947 is not applicable and hence allegation of non-compliance of Section 25-N becomes baseless and without substance.

6. In so far as Respondent No. 1 (i.e. Shekoba Auto (P) Ltd.) is concerned, the manufacturing process in the factory of Respondent No. 1 has been totally discontinued and that the Respondent has used the word 'retrenchment' instead of the word 'closure' only because of the fact that the Respondent being a private limited company duly registered under the

Companies Act, the Respondent cannot just close the doors like a private owner and the Respondent has to complete many formalities under the Companies Act and has also to complete business deals like recovery of bills and clearance of dues of suppliers, etc. and so far as the manufacturing activities and the workmen employed thereon are concerned, it is a complete closure. In their reply to the complaint, the Respondent also placed reliance on the judgment of the Supreme Court in the case of **Haryana Seeds Development Corporation Ltd., vs. Presiding Officer and another** (1997 II C.L.R. 395). The Supreme Court in the aforesaid case has observed that in case of closure, the rigor imposed under Section 25 (F) of the Industrial Disputes Act, stands excluded. In the alternative, it is their contention that all the requirements under Section 25(F) of the Industrial Disputes Act have been scrupulously complied with by the Respondent prior to the action of discontinuation

of manufacturing process and 'Retrenchment' of workmen engaged thereon. Paragraph 5 of the complaint in this respect is blatantly false, frivolous and mischievous and it is their case that the complainants have not been able to show how the compensation awarded to them is not correctly calculated and the documents filed by the complainants themselves would go to show that the Respondent did take into consideration the previous service of the workmen prior to their initiation in Shekoba Auto Pvt. Ltd. i.e., the present Respondent No. 1 and that while calculating the compensation service of 23 years has been taken into consideration in respect of all the employees who came over to Auto Components Company in 1978. This goes to show the bonafides of the Respondent and malafides of the complainant employees. It was the case of the Respondents that they have duly communicated to the Union of the complainant workmen about the

stoppage of the manufacturing activities and, therefore, the claim of the employees of re-employment of retrenched workmen does not arise. In so far as the unit of Hubli is concerned, it is submitted that they do not own any unit at Hubli. There is a partnership firm in the name and style of Hi-Tech Products Co. which does manufacture similar items like the items produced by the Respondent No. 1 and, therefore, on this count also the complaint is unsustainable and as the complainants have failed to show how the provisions of Section 25(N) of the Industrial Disputes Act, 1947 are applicable and the Respondent has also stated that it has paid all the legal dues to the complainants including the amount payable under Section 25(F) of the Industrial Disputes Act, without deducting any dues and on the other hand, they have suffered loss of Rs. 10,000/- per day on account of wages of the workmen and, therefore, the complaint deserves to be dismissed.

7. The learned Member of the Industrial Court by his order dated 29th September, 1999 allowed the complaint in favour of the complainant employees. The learned Member of the Industrial Court on the basis of the evidence on record arrived at a finding that the complainants have proved that the respondents have engaged in unfair labour practices under Item 9 of Schedule IV of MRTU & PULP Act, 1971 and that they are entitled for the relief sought which were the two demands considered by him for adjudication. The order came to be challenged by preferring a writ petition in this Court. The Petitioner employer raised a preliminary issue before the learned Single Judge that the complaint has been filed by the complainants under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 which was not maintainable and cases of termination are to be tried by the Labour Court as contemplated under Section 7 of the Act by placing reliance on the decision of the Supreme Court in the case of **M/s.**

Lokmat Newspapers Pvt. Ltd., vs. Shankarprasad (1999 II CLR 433) wherein it is laid down the proposition of law that the scope and ambit of Item 1 is extremely wide and also includes the cases of retrenchment. It was also the case of the Petitioner employer that the issue was considered by this Court in the case of **Pepsi Co. India Holdings Pvt. Ltd., vs. Noshir Elavia**, 2002 (1) CLR 953 wherein it was held that the cases of termination of service will have to be filed under Item 1 of Schedule IV and Item 9 cannot be invoked for the said purpose. It is submitted that the same view was followed by this Court in the case of **Supertex (India) Corporation vs. Radhashyam Pandey**, 2001 III CLR 299 and in **Dilip Wawande vs. Industrial Court, Nagpur**, 1995 II CLR 897, wherein it was held that the Industrial Court cannot deal with the complaint in respect of termination of services falling under Item 1 of Schedule IV of the MRTU & PULP Act. This preliminary issue was contested by the employees on the ground

that this being the issue which goes to the root of the matter, which was not taken up before the Industrial Court and, therefore, the said question cannot be decided but the learned Single Judge negatived the contention on behalf of the employees in view of the decision rendered by the Supreme Court in the case of **Chittoori Subbanna vs. Kodappa Subbanna**, AIR 1965 SC 1325 wherein it was held that a pure question of law not depended upon the determination of any question of fact should be allowed to be raised even at the last stage and that it is also needless to mention that the jurisdiction of the Court cannot be conferred by the conduct of the parties. Therefore, the learned Single Judge dealt with the matter on two issues. Firstly, as to whether the Industrial Court had jurisdiction to entertain the complaint and as regards the finding given by the Industrial Court in respect of functional integrality between the Petitioner and Respondent No.41 and on both the counts arrived at the finding that the Industrial

Court not only lacked jurisdiction but even on merits no case has been made by the complainants and the Industrial Court has lost sight of the factual aspect while considering the provisions of the Industrial Disputes Act which do not contemplate two independent companies to be one industrial establishment or undertaking and the impugned order of the Industrial Court was found to be erroneous and was quashed and set aside.

8. Mr. S.J. Deshmukh, the learned counsel appearing for the appellant employees submitted that the learned Single Judge failed to appreciate that by allowing the writ petition the learned Single Judge committed an error of law whereby the Respondent No. 1 without taking recourse to the provisions of Section 25-O of the Industrial Disputes Act, 1947 was allowed to close down its undertaking which was an illegal closure. It is further contended that it has clearly amounted to granting of permission to Respondent No. 1 to close

down its undertaking though Section 25-O of the Industrial Disputes Act, 1947 was attracted.

9. Another contention raised by Mr. Deshmukh, the learned counsel for the Appellants, is that the learned Single Judge has failed to appreciate that on the basis of evidence on record of the case it was conclusively proved that there was complete financial and functional integrality between the Petitioner and Respondent No. 41 and since the total number of employees exceeded 100, Chapter VB therefore was attracted and the Respondent No. 1 ought to have taken prior permission for closure under Section 25-O of the Industrial Disputes Act. Mr. Deshmukh submitted that the preliminary issue raised before the learned Single Judge by the respondent employer as regards the jurisdiction of the Industrial Court to entertain the complaint treating as the case of termination and the same being accepted, is an apparent error on the face

of record.

10. On the other hand, Mr. C.U. Singh, the learned Senior Counsel for Respondent No. 1, has submitted that the Industrial Court does not have the jurisdiction and a specific jurisdiction in this behalf is vested in the Labour Court. It is further contended that there is no clubbing together two different employers for the purpose of applying Section 25K and 25L of the Industrial Disputes Act, 1947. The number of workmen is to be seen, and 'workmen' can only be those employed by the employer who is closing down or retrenching workmen. Employees of an altogether different company can never be clubbed together as they are not the 'workmen' of the Respondent No. 1 Company. It is further contended that the findings recorded by the Industrial Court in respect of functional integrality between the Respondent No. 1 and the Respondent no. 2 are not only erroneous but are also

perverse as they are contrary to the record and, therefore, the judgment is rightly set aside by the learned Single Judge. It is the contention of the learned counsel for the Respondent No. 1 that the Industrial Court having appraised of the law on the said issue had completely misdirected itself while coming to the conclusion.

11. The points which arise for our determination are whether the complaint as preferred and filed before the Industrial Court under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 was maintainable or not and whether the complainants had been able to establish that the provisions of Section 25-O of the Industrial Disputes Act, 1947 are attracted in their case and, therefore, the retrenchment is in contravention of Section 25-N of the Industrial Disputes Act. In short, whether Chapter VB of the Industrial Disputes Act, 1947 is attracted to the case of

the complainants?

Point No. 1.

12. The learned counsel appearing for the appellants submitted that the whole approach of the learned Single Judge was misdirected as it held that complaint under Item 9 of Schedule IV of the MRTU & PULP Act was not applicable in the facts of the case and that as it was the case of termination it will fall under Item 1 of Schedule IV of the MRTU & PULP Act. It was, therefore, submitted that the decision rendered by the Supreme Court in the case of **S.G. Chemicals and Dyes Trading Employees Union and S.G. Chemicals and Dyes Trading Limited and Another**, (1986 I [L.L.J.](#) 490) clearly lays down the para-meters in the matter of initiating complaint under Section 28. Item 9 of Schedule IV is attracted if there is a contravention of subsisting settlement with regard to salary and other benefits between the workmen and

Management and there is a closure contravening the provisions of Section 25-O of the Industrial Disputes Act, 1947 and consequent failure to implement the settlement amounts to unfair labour practice and it is submitted that the said decisions will hold the field. Per contra, it is the contention of Mr. C.U. Singh, the learned Senior Counsel appearing for the respondent employer, that the Supreme Court in **M/s. Lokmat Newspapers Pvt. Ltd., vs. Shankarprasad** (supra) after examining various clauses of item 1 has held that it leaves no room for doubt that when the Legislature used the words 'discharge' or 'dismissal' of the employees under circumstances enumerated in clauses (a) to (g) in item no.1 of Schedule IV, it not only contemplated dismissal orders which obviously are penal in nature but it also contemplated discharge orders which may either be penal or non-penal in nature and still if any of the relevant clauses of item no. 1 got attracted in connection with such discharge

orders they would make the employer, author of such discharge orders, answerable for the alleged 'unfair labour practice' permeating the passing of such simplicitor discharge orders. To recapitulate, in the present case, respondent's complaint is not that his discharge was by way of penalty but his complaint is that the discharge order in his case was a result of victimisation and was not passed in good faith but was passed on patently false reasons and was a result of undue haste on the part of the appellant-employer. Whether the said complaint was justified on merits or not is a different matter but it cannot be said that such a complaint regarding non-penal discharge order was dehors the scope and ambit of item no. 1 of Schedule IV of the MRTU & PULP Act. Mr. C.U. Singh has also placed reliance on the decision of the **Pepsi Co. India vs. Noshir Elavia**, (supra) wherein this Court held that although there may have been a breach of the standing orders applicable to the establishment, the result is that

there has been a termination of service of the employee. Consequently, the reliefs, which can be claimed is of reinstatement with continuity of service with full back wages. This is a relief which can be granted by the Labour Court under Item 1 of Schedule IV of the Act. In fact, under Section 7 of the Act, all complaints relating to unfair labour practices described in Item 1 of Schedule IV of the Act are to be tried exclusively by the Labour Court. In the instant case, the action of petitioner in terminating the services of the respondent has resulted in the petitioner's claim for reinstatement which is the final relief that can be granted to the respondent, and, therefore, the complaint under Item 9 of Schedule IV of the MRTU & PULP Act could not be maintainable in such a case. It is submitted that the learned Judge while dealing with the case of **Pepsi Co. India Holdings Pvt. Ltd., vs. Noshir Elavia** (supra) did take into consideration the case of **S.G. Chemicals and Dyes Trading Employees**

Union vs. S.G. Chemicals and Dyes Trading Limited and Another (supra) and found that the judgment cannot be interpreted to be that the Apex Court has given a go-by to the provisions of Item 1 of Schedule IV. The provisions of Item 1 of Schedule IV are attracted when the employer discharges or dismisses employees (a) by way of victimisation, (b) not in good faith, but in the colourable exercise of the employer's rights; © by falsely implicating an employee in a criminal case on false evidence or on concocted evidence; (d) for patently false reasons; (e) on untrue or trumped up allegations of absence without leave; (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste; (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment. Mr. Singh, therefore,

submitted that the learned Single Judge was right in holding that the case of termination should be tried by Labour Court as contemplated under Section 7 of the MRTU & PULP Act and the complaint will have to be filed under item 1 of Schedule IV and item 9 cannot be invoked for the said purpose. The Court has also relied upon the decisions which are referred to in **Pepsi Co. India Holdings Pvt. Ltd. (supra), Supertex (India) Corporation vs. Radhashyam Pandey**, (2001 III CLR 299) and **Dilip Wawande vs. Industrial Court, Nagpur**, 1995 II CLR 897 in support of arriving at such a conclusion.

13. In our view, the learned Single Judge was not right in holding that the case of the appellant would fall under Item 1 of Schedule IV of the MRTU & PULP Act, 1971 by placing reliance on M/s. Lokmat Newspapers Pvt. Ltd., and other judgments referred to in his order. We are in agreement with Mr. Deshmukh that the facts

of the case as pleaded in the complaint clearly bring the complaint within the ambit of Item 9 of Schedule IV as held in the case of S.G. Chemicals and Dyes Trading Employees Union (supra) by the Supreme Court. On principle, the facts in the case of S.G. Chemicals and Dyes Trading Employees Union are almost similar with the case in hand. In S.G. Chemicals and Dyes Trading Employees Union's case also there was a challenge to the termination of the services of the workmen by the employer which led to filing of the complaint under Section 28 of the MRTU & PULP Act, 1971 complaining that the closure of the Churchgate Division was contrary to the provisions of Section 25-O of the Industrial Disputes Act and that the company had committed an unfair labour practice under the aforesaid Act. It was the case of the union that for the purpose of Section 25-O all the workmen working in all the three Divisions of the Company should be taken into consideration as there was

functional integrality amongst all the three Divisions and the Industrial Court has held that the Churchgate Division was not part of an 'undertaking or an establishment' and, therefore, the company was not obliged to follow Section 25-O of the Industrial Disputes Act and further that the violation of Section 25-O would not constitute act of unfair labour practice within the meaning of the MRTU & PULP Act, 1971, and, therefore, the complaint was dismissed and the union was required to directly approach the Supreme Court in appeal against the order of the Industrial Court without first approaching the High Court under Articles 226 and 227 of the Constitution of India for the purpose of challenging the order. The reason stated at the Bar for not first approaching the High Court to get the same relief was that in view of the judgment of the learned Single Judge of the High Court in **Maharashtra General Kamgar Union vs. Class Containers Pvt. Ltd., and another**, (1983-1 [L.L.J.](#) 326), if a writ petition were

filed in the High Court, it would certainly have been dismissed, forcing the employees through the Union to come to this Court in appeal against the order of the High Court. The Supreme Court held that when considered that here are eighty-four workmen who have been thrown out of employment and can ill-afford the luxury of fighting from court to court and that some of the questions arising in the case are of considerable importance both to the employers and the employees, the reason given for directly coming to this Court must be held to be valid and this must be considered to be a fit case for this Court to exercise its discretion and grant Special Leave to Appeal.

14. In S.G. Chemicals and Dyes Trading Employees Union's case (supra) the Supreme Court examined the issue at great length and in its findings squarely covered the controversy in the present case. The Supreme Court observed in paragraph 23 as under:-

“23. The last contention of the merits which was raised on behalf of the Company was that though the Company might have acted in contravention of the provisions of S. 25-O of the Industrial Disputes Act, it none the less would not amount to a failure to implement the Settlement dated 1st February, 1979, entered into between the Company and the Union and, therefore, the act of closing down the Churchgate Division was not an unfair labour practice under S. 28 of the Maharashtra Act read with Item No. 9 of Schedule IV to the said Act. This contention too found favour with the Industrial Court. For reaching the conclusion that the closing down of the Churchgate Division was not an act of

unfair labour practice on the part of the Company, the Industrial Court relied upon the decision of a learned Single Judge of the Bombay High Court in the case of *Maharashtra General Kamgar Union v. Glass Containers Pvt. Ltd., and another* (supra). The relevant passage in that judgment is as follows (at page 331):

“It is difficult to accept the submission made on behalf of the Union that non-compliance with any statutory provisions such as S.25-FFA must be regarded as failure by the employer to implement an award, settlement or agreement. The position might be different in relation to certain statutory provisions which are declared to hold the field until replaced by specific provisions applicable to certain specific undertakings. For example, the Model Standing Orders may govern a particular employer and his workmen till repulsed or substituted by certified Standing Orders specially framed for that employer and approved in the manner provided under the statute or the rules. This would not imply that

provisions such as those contained in S.25-FFA or S.25-FFF of the Industrial Disputes Act can be held or deemed to be part of the contract of employment of every employee. Any such interpretation would be stretching the language of item 9 to an extent which is not justified by the language thereof.”

15. As contended by Mr. C.U. Singh, the learned Counsel appearing for the Respondent No.1, we do not find that the Supreme Court has deviated from the view taken in S.G. Chemicals and Dyes Trading Employees Union's case (supra) while dealing with the case of Lokmat Newspapers Private Limited vs. Shankarprasad (supra). On the other hand, the Supreme Court has reiterated its view and has considered whether the retrenchment order was held to be illegal being contrary to the provisions of the Industrial Disputes Act, 1947. One of the points which arose for consideration of their Lordship was whether the impugned retrenchment order amounted to the commission of unfair labour practice by the appellant as per Schedule

IV item 1 (a), (b), (d) and (f) of the Maharashtra Act (MRTU & PULP Act, 1971. While dealing with the issue the Supreme Court has held as under :-

“””””39. It has to be kept in view that the present proceedings arise out of a complaint filed by the respondent-workman alleging 'unfair labour practice' on the part of the appellant-management when it passed the impugned order of retrenchment against him.

“40. The said complaint was moved under Section 28 of the Maharashtra Act. The topic of 'unfair labour practice' is dealt with in Chapter VI of the said Act. Section 26 is the first section in the said chapter which provides as follows:

Unfair labour practices:- In this Act, unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedules II, III and IV."

Section 27 lays down as follows :

"Prohibition on engaging in unfair labour practices:- No employer or union and no employee shall engage in any unfair labour practice."

Section 28 lays down the procedure for dealing with complaints relating to 'unfair labour practices'. Sub-section (1) thereof provides as follows :-

"(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any investigating officer may, within ninety days of the occurrence of such 'unfair labour practice', file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Act.

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.”

"It is not in dispute in this case that the respondent invoked the jurisdiction of the Labour Court which was competent to deal with his complaint regarding 'unfair labour practice', under items 1 (a), (b), (d) and (f) of Schedule IV of the Maharashtra Act. Section 7 of the Act lays down the duties of Labour Court and states as under :-

“It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under this Act.”

When we turn to Schedule IV item no. 1, we find therein listed number of heads

of 'unfair labour practices' which can support any complaint thereunder. The relevant clauses of item no. 1 of Schedule IV which were invoked by the respondent for supporting his complaint against the impugned retrenchment order were clauses (a), (b), (d) and (f). Item no. 1 with all its sub-clauses reads as under :-

“To discharge or dismiss employee-

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer's rights;

© by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

We have, therefore, to see as to whether in the light of our findings on point nos. 2 and 3 the respondent could rely upon any of these clauses of item no. 1 of Schedule IV in support of his complaint. Now a mere look at the aforesaid provision shows that an employee who makes a grievance against order of discharge or dismissal passed against him can invoke any of the listed clauses (a) to (g) of item no. 1 of Schedule IV. Learned counsel for the appellant was, therefore, right when he contended that first it should be alleged by the complainant-employee that he was

discharged or dismissed from service by the employer and then he has to further show whether such an order attracted any of the clauses (a) to (g) of item no. 1 of Schedule IV. Learned counsel for the appellant, in this connection, vehemently contended that item no. 1 of Schedule IV of the Maharashtra Act deals with only punitive discharges or dismissals and not any simplicitor discharge order or termination order which is not passed by way of punishment. In order to support this contention, learned counsel for the appellant relied upon principles of interpretation, namely, the principle of *noscitur a sociis* as well as the principle of *ejusdem generis*. So far as the first principle of interpretation is concerned,

he referred to “Maxwell on The Interpretation of Statutes”, 12th Edition at page 289 dealing with the question regarding understanding associated words in common sense. The learned author in connection with this principle has made the aforeaid pertinent observations:

“Where two or more words which are susceptible of analogous meaning are coupled together, *noscitur a sociis*. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general. (One application of this general principle is discussed in the next section of this chapter.)”

It becomes, therefore, obvious that before this principle of interpretation can be pressed in service, it must be

shown that both the words 'discharge and dismissal' are employed by the Legislature in Schedule IV item no. 1 in the same sense or that they are susceptible of analogous meaning. This rule of construction in other words lays down as follows:

“The meaning of a word is to be judged by the company it keeps.”

As held by this Court in the case of *M.K. Ranganathan & Anr. v. Govt. of Madras & Ors.* (AIR 1955 SC 604 at 609 relying upon Privy Council decision in *Angus Robertson v. George Day*, [(1879) 5 AC 63 at p. 69 (E)]:

“It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them”.

Keeping in view this well-settled principle of construction of statutes, let us see whether in the settings of item

no. 1 clauses (a) to (g) the word 'discharge' as employed by the Legislature has meaning analogous to that of the word 'dismiss'. When we have a close look at clauses (a) to (g) of item no. 1 of Schedule IV, we find that the word 'discharge' is not intended by the Legislature to have the same or analogous meaning as the word 'dismiss'. The reason is obvious. The word 'dismiss' necessarily connotes an action of the employer who seeks to impose punishment on his misconducting employee. Such a punishment cannot be imposed without following the principles of natural justice and the relevant applicable rules of domestic inquiry. But the word 'discharge' is not necessarily confined to

orders of termination by way of penalty only. The word 'discharge' has wider connotations. A mis-conducting employee facing charges in a domestic enquiry may be punished by way of imposing on him an order of dismissal which may make him ineligible for any other employment but if it is found that the charges which are proved are not that serious but the employee would not deserve to be continued in service then an order of discharge by way of lesser penalty can be imposed on him. Such an order would remain a punitive discharge. Thereby the employer wants to punish the employee for his misconduct but does not want him to become ineligible for employment elsewhere considering less serious

nature of proved charges of misconduct against him in domestic inquiry. But that is not the end of the matter. In service jurisprudence the term 'discharge' has assumed a wider connotation and may include in its fold not only punitive discharge orders but also simplicitor discharge orders where the employer seeks to snap the relationship of employer and employee but without any intention to penalise the employee. He does so because of exigencies of service and employment conditions which may require him to say goodbye to the employee but without any intention to punish him. Such simpliciter discharge orders can be illustrated as under :

An employee, on probation, may not be found to be suitable and may not earn sufficient merit so as to be confirmed in service. Consequently, his probation may be terminated and an order of discharge simpliciter can be passed against him. There may also be other cases of simple discharge under the contract of employment for a fixed period where an employee on efflux of time may be terminated. There may also be cases where an employee may become surplus and would no longer be required by the employer. An order of retrenchment, therefore, may be passed against him subject, of course, to following the statutory requirements of Sections 25-F and 25-G of the I.D. Act if they are applicable. These

illustrations are not exhaustive but they indicate such orders of discharge are passed by an employer who does not want to punish the employees but still is not in a position to continue them in service. Such simplicitor discharge orders are also a category of discharge orders. Therefore, the word 'discharge' as employed by the Legislature in item no. 1 of Schedule IV cannot necessarily be confined only to punitive discharges as tried to be submitted by learned counsel for the appellant. Once we consider the words 'discharge' or 'dismissal' as employed in the opening part of item no. 1 by the Legislature in the light of various clauses representing different situations under which such discharge or dismissal orders are said

to amount to 'unfair labour practice' on the part of the employers, it becomes at once clear that the Legislature was not contemplating only punitive discharge orders but was contemplating both types of discharge orders, namely, punitive as well as non-punitive discharge orders. The very first item ('a') deals with the discharge or dismissal order passed by way of victimisation of the employee. It is easy to visualise that an employer may like to dispense with the services of an employee who, according to him, is a trouble maker. He may not have been involved in any misconduct as such still by way of putting an end to his service on extraneous reasons, if an order of discharge is passed it may remain

simpliciter order of discharge but if it is found based on extraneous reasons it would be by way of victimisation. Such a discharge order may not necessarily be a punitive discharge order. The employer would not like to punish the employee for any of his misconduct but would not like him to continue in service as according to the employer he may be an undesirable person not suitable to the management as for example a militant trade union leader who, according to the employer, is anyhow to be required to be sent out of service. When such type of discharge orders are passed by way of victimisation they would be simpliciter discharge orders when not backed up by relevant reasons. It cannot be said that such

simpliciter discharge orders are not covered by item '1' clause ('a') of Schedule IV. Similarly clause ('b') may contemplate a discharge order which is not passed in good faith but in the colourable exercise of employer's rights. Thus, the employer may have merely a pretext to put an end to the service of the employee who may not have misconducted himself at all. Therefore, there will be no occasion to have any departmental inquiry against him as no charge could be framed regarding any misconduct on his part. Still if such an undesirable employee is to be removed from service then even though the simpliciter discharge order is passed if it is shown that it is not in good faith but as a result of *malafide* intention of the

employer, then such a discharge order can also attract the category of 'unfair labour practice' as enacted by the Legislature in item nos. ('a') and ('b'). Similar Legislature scheme is discernible from clause (c) of item no. 1 which deals with an order of discharge or dismissal by falsely implicating an employee in a criminal case on false evidence or on concocted evidence. In such a situation discharge or dismissal order may operate as a penal order. Similarly, clause (d) may cover cases which are orders of discharge or dismissal by way of penalty as well as simpliciter discharge orders based on a patently false reasons. Clause (e) referring to discharge or dismissal may cover both the cases of dismissal by

way of penalty on such grounds or discharge by way of penalty on such grounds and equally a discharge order simplicitor on account of false allegations of absence without leave. So far as Clause (f) is concerned, the first part squarely covers a case of dismissal or discharge by way of penalty as it deals with such orders passed after conducting domestic inquiry about the alleged misconduct of the employee but in utter disregard of the principles of natural justice but so far as the second part of clause (f) of item no. 1 is concerned, if an employee is dismissed with undue haste it may be by way of penalty as in domestic inquiry apart from following the principles of natural justice, sufficient and reasonable

opportunity to defend may be denied to the employee and with undue haste the dismissal order may be passed. That would obviously be a penal order but so far as discharge order is concerned, it may also be passed by way of penalty with undue haste but the said part of clause (f) may equally cover those discharge orders which are simpliciter discharge orders not by way of penalty but still being passed with undue haste on the part of the employer who may not be wishing to punish the employee but wishing to say goodbye to the employee on the ground that he is otherwise an unwanted person. Such discharge orders passed with undue haste may not necessarily be penal and still may amount to 'unfair labour

practice' if they are passed with undue haste. Clause (g) of item no. 1 obviously refers to only discharge or dismissal orders which are penal in nature as may have a direct linkage with misconduct of the employee.

“””””41. The aforesaid resume of various clauses of item no. 1 of Schedule IV leaves no room for doubt that when the Legislature used the words 'discharge' or 'dismissal' of the employees under circumstances enumerated in clauses (a) to (g) in item no. 1 of Schedule IV it contemplated dismissal orders which obviously are penal in nature but it also contemplated discharge orders which may either be penal or non-penal in nature and still if any of the relevant clauses of item no. 1 got attracted in

connection with such discharge orders they would make the employer, author of such discharge orders answerable for the alleged 'unfair labour practice' permeating the passing of such simpliciter discharge orders. To recapitulate, in the present case, respondent's complainant is not that his discharge was by way of penalty but his complaint is that the discharge order in his case was a result of victimisation and was not passed in good faith but was passed on patently false reasons and was a result of undue haste on the part of the appellant-employer. Whether the said complaint was justified on merits or not is a different matter but it cannot be said that such a complaint regarding non-penal discharge order

was *dehors*”””””””””” the scope and ambit of item no. 1 of Schedule IV of the Maharashtra Act.

“42. Before parting with the discussion on this aspect we may mention that learned counsel for the appellant also relied upon the other rule of interpretation, namely, rule of *ejusdem generis*. The said rule of interpretation provides as follows :

“”””””””””””When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as the rule of *ejusdem generis* reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous.””””””””””””

It is difficult to appreciate how this principle of interpretation can be invoked by learned counsel for the appellant in connection with item no. 1 of Schedule IV. The word 'discharge' is a general word. It is followed by the word 'dismissal' which contemplates only one category of cases or situations where penalty is imposed by the employer on the workmen concerned. The rule of *ejusdem generis* would have applied if the word 'discharge' represented a particular species belonging to the genus reflected by the general word 'dismiss'. This is a converse case where a general word 'discharge' is followed by the word 'dismiss' which is of a particular nature or pertains to a limited class or category of penal situations. Obviously, therefore, neither of them is a genus and nor of them is a species of the very same genus. The word 'discharge' connotes an entirely different category of orders comprising of both simpliciter discharge orders not by way of penalty as well as discharge orders by way of penalty but not involving extremely pernicious results flowing from such orders while the word 'dismiss' is purely an order of penalty and that too of an extreme type. Consequently, the aforesaid rule of interpretation cannot be of any avail to learned senior counsel for the appellant. On the contrary, as seen by us earlier, the words 'discharge' and 'dismissal' as

employed by the Legislature in item no. 1 of Schedule IV covered different types of situations and circumstances under which they are passed. It is, therefore, not possible to agree with the submission of learned senior counsel for the appellant that unless the respondent shows that he was discharged by way of penalty, he cannot invoke any of the clauses of item no. 1 of Schedule IV.””

16. The Supreme Court after dealing with the premise that Item No. 1 of Schedule IV can be invoked in the said case was required to observe in paragraphs 46, 47 and 48 as under :-

“”46. It is, therefore, not possible to agree with the reason of the Division Bench of the High Court in the impugned judgment that the action of the appellant was by way of victimisation of the respondent. Item no. 1 clause (a) of Schedule IV, therefore, does not

apply to the facts of the present case.

“47. On a parity of reasoning it has to be held that the discharge of the respondent from service cannot be said to be not in good faith but in the colourable exercise of employer's rights. It cannot be gainsaid that the appellant had good reason to discharge the respondent who was rendered surplus in hand composing department because of the introduction of the machine in question. It is difficult to impute any bad faith to the appellant as the appellant tried its best to provide alternative job to the respondent at Jalgaon but the said offer was not accepted by the respondent and, on the contrary, the transfer order was got declared illegal

and an act of 'unfair labour practice' in proceedings culminating before the Tribunal. Clause (b) of item no. 1 of Schedule IV, therefore, is also not attracted on the facts of the present case.

“48. The third plank of respondent's complaint pertains to the applicability of clause (d) of item no. 1 of Schedule IV. The said clause can be attracted only if it is shown that the impugned termination was for patently false reasons. It is difficult to appreciate how the Division Bench persuaded itself to hold that the said clause was attracted on the facts of the present case. The appellant had a genuine reason for terminating the services of

the respondent as hand composing department had become redundant on account of the introduction of the machine in question. It is true, as submitted by learned counsel for the respondent, that the impugned retrenchment order dated 22.6.1982 showed that the management, as per notice under Section 9-A, had noted that it may require to reduce 25 workmen from service for the purpose of introducing new technology. It is also true that the new technology was already introduced by the management months prior to the day of the termination order dated 22nd June, 1982, to be precise from January, 1981 on an experimental basis as submitted by learned counsel for the appellant and on

regular basis at least from November, 1981. Still it cannot be held that the proposed termination was not based on real reason or was effected on patently false reasons. If no such machine was ever introduced and still such a ground was made out for passing the impugned order, then it could have been said that the impugned termination was passed on patently false reasons. The patently false reason would be one which has no existence at all in fact and is a mere pretext or an excuse. Such is not the situation in the present case. It may be that the reason given may not be strictly accurate in the sense machine was already introduced and was not likely to be introduced by the time notice under Section 9-A was given followed by the

impugned termination order. That may have effect of non-compliance of the provisions of Section 9-A. The said notice, as we have seen earlier, on that score may become inoperative or illegal. Still the reason for termination cannot be said to be patently false. We, therefore, disagree with the conclusion of the Division Bench of the High Court in view of our aforesaid findings regarding non-applicability of clauses (a), (b) & (d) of item 1 of Schedule IV. On this conclusion, we would have been required to dismiss the respondent's complaint but for the fact that the fourth leg of the respondent's complaint invoking clause (f) second part of item no. 1 cannot be said to be non-existent or unjustified or uncalled for."

17. The Supreme Court rather deprecated the practice adopted by the employer in issuing the order of retrenchment within half an hour of the closure of the conciliation proceedings by Conciliation Officer and held that this was nothing but to preempt the report of the conciliation on the one hand and on the other hand even the future objective action of the State Government on such report and that was indicative of the conduct of the employer in issuing the order of retrenchment by showing undue haste and, therefore, accepted the view of the Division Bench of this Court that the case of the employee would squarely fall and can be well sustained at least under clause (f) of Second part of Item 1 of Schedule IV as the impugned order was passed with undue haste and liable to be treated as guilty of 'unfair labour practice'. In Pepsi Co. India Holdings Pvt. Ltd., 's case the learned Single Judge while referring to S.G. Chemicals and Dyes

Trading Employees Union's case distinguished the same without addressing the core issue as it observed that this judgment (S.G. Chemicals and Dyes Trading Employees Union) cannot be interpreted to mean that the Apex Court has given a go-by to the provisions of Item 1 of Schedule IV which was not the ratio in the decision in S.G. Chemicals and Dyes Trading Employees Union's case. In our view, therefore, the decision on which reliance has been placed by the learned counsel for the Respondent and which led the learned Single Judge to hold that the Industrial Court will have no jurisdiction, does not appeal to reason. Therefore, we find that the issue of jurisdiction raised by the Respondent is baseless.

Point No. 2.

18. In our opinion, considering the pleadings of the parties and the evidence on record, the learned

Single Judge rather misdirected itself in dealing with this aspect of the case. The learned Single Judge while considering as to whether the respondent employers if taken together constitute one establishment so as to attract provisions of Section 25-O of the Industrial Disputes Act, 1947 mainly laid emphasis on the issue of functional integrality between Shekoba Auto Private Limited and Neotronics (P) Ltd., The learned Single Judge has based his findings mainly on the characteristics of the two industrial establishments which admittedly came into existence even according to the respondent employees by subdivision of a partnership concern known as 'Electro Components Company' which was established in April 1972. Thereafter a second partnership firm came into being known as 'Auto Components Company'. It was the case of the employer that "Electro Components Company" decided to discontinue manufacture of auto condensers from their product line and this product was

taken over by the new firm 'Auto Components Company' and later on developed new product of its own and tried to distinguish itself by stating that majority of products of Auto Components Company were related to automobile industry whereas the product range of Electro Components Company consisted of products or parts principally of electronic industry. According to them, Auto Components Company also took over workmen working in Auto Condenser Section of Electro Components Company, who were willing to change over and in support of their contention has placed reliance on a letter dated 24th September, 1978 which is placed on record by the complainants themselves and submitted that the change over to the new employer by the employees was on their own free will and thus the Auto Components Company took over the employees of Electro Components Company who were working in Auto Condenser Section of the Auto Components

Company. Thereafter it is their case that Electro Components Company totally discontinued manufacture of its product and the firm Auto Component Company was converted into a private limited company under the name and style 'Shekoba Auto Private Limited' on 6th June, 1985. They have taken up new employees in addition to those who were taken over from Electro Components Company and in March, 1999 this Shekoba Auto (P) Ltd., has discontinued its manufacturing activities and, therefore, according to them Neutroniks (P) Ltd., and Shekoba Auto (P) Ltd., are distinct entities.

19. Before the Industrial Court both the parties led evidence. In so far as the employees were concerned, they claimed that both the companies are owned by the partners of Electro Components Company who are the original employers who kept on changing the names of the companies from time to

time and taking into consideration geographical location which is located in the same building where the earlier unit Electro Component Company was functioning and that they were given option to work for the two units which were operational as separate and distinct companies and that the nature of work was that it was interchangeable and there was no difference in service conditions, wages, allowances, etc., between the employees of respondent nos. 1 and 2 and they were all members of Sarva Shramik Sanghatana. It is admitted by the employees that the two units were manufacturing items required for different industries under different trade names but were having identical machine tools. The employees have also admitted that the manufacturing activities in Shekoba Auto Private Limited are admittedly stopped whereas the manufacturing activities in Eletro Components Co. are going on and there is no reduction of work force in respondent no. 2 company. Therefore, it was their

case that on the date they were retrenched their case was covered by Section 25-O of the Industrial Disputes Act, 1947 and as their retrenchment was not in compliance with sub-section (7) of Section 25-N of the Industrial Disputes Act, 1947 and as per Section 25-K Chapter VB was applicable in their case as together the number of employees in the two units was not less than 100 workmen on an average per working day for the preceding twelve months. The order of retrenchment being without following the statutory provisions was bad in law and, therefore, it attracted unfair labour practice within the meaning of Item No. 9 of Schedule IV of the MRTU & PULP Act, 1971. The employer examined Surendra Suratkal Shenoy on their behalf. In his evidence he has admitted that he is the Director of Respondent No. 1 and reiterated the case which they have submitted in their reply to the complaint. He has clearly stated that the two units were manufacturing different types of capacitors i.e..

one was manufacturing electronic capacitors, ignition capacitors which are used as components in different industries i.e., electronic capacitors are used in Televisions, test instruments, X-ray machines, computers, etc., and ignition capacitors are used in automobile industry in petrol driven automobiles especially two wheelers. But the witness has admitted that when the second firm came into existence the workers of the first firm were absorbed in the second firm and when the two firms got converted into private limited firms and as Shekoba Auto Private Limited was not a proprietary venture they decided to close it down and were required to retrench the employees. It was their case that Shekoba Auto Private Limited had less than 100 employees and, therefore, the provisions of Chapter VB of the Industrial Disputes Act, 1947 are not applicable. The employers witness admitted certain common features in operating the two units i.e., financial relationship, establishments being housed in

the same building, they permitted inter-change of work-force and owned by three families, i.e. Shenoy, Bhats and Kamats. In respect of product, he has admitted that they were different in nature and has admitted that in spite of the fact that Shekoba Auto Private Limited has been closed down they still hold the required licences and permissions and have carried out compliance in respect of statutory obligations are concerned and that in spite of its closure they have not informed the Excise Authorities for cancellation of their licence nor the ESIC and Provident Fund authorities of their closing of the manufacturing activities. He has also admitted that though he informed the workmen that they are stopping manufacturing operations and not closing the manufacturing operations and that some of the employees are still retained, which according to them, are mostly in the nature of administrative staff who are required to function till the business is completely wound up. The witness was

confronted with instances of employment of workers from other establishments which he has admitted. He has also accepted that the registered office of the two companies is the same so also various permissions and certificates like certificate of Central Excise are identical. In so far as financial aspects are concerned, the witness has accepted their financial unity in so far as the two units are concerned and the accounts are settled by both by book adjustments.

20. The question as to whether a particular unit is part of a bigger or another establishment within the meaning of Section 25-E (iii) of the Industrial Disputes Act, 1947 came to be considered in the case of **Associated Cement Companies Ltd., And Their Workmen** (1960 I L.L.J. p. 1) by the three Judge Bench of the Supreme Court wherein the following para-meters were considered as the test to determine the question as to whether a particular unit is part of

another establishment and the Supreme Court in clear terms stated that it is a pure question of fact. Several points of view which were considered such as :-

- (1) ownership,
- (2) control and supervision,
- (3) finance,
- (4) management and employment,
- (5) geographical proximity, and
- (6) general unity of purpose and functional integrality, with particular reference to the industrial process of making cement.

The Supreme Court after considering various decisions which we do not propose to reproduce concluded and observed as under :

"We do not think that these decisions

carry the matter any further than what we have explained in earlier paragraphs of this judgment. We must have regard to the provisions of the statute under which the question falls to be considered; if the statute itself says what is one establishment, then there is no difficulty. If the statute does not, however say what constitutes one establishment, then the usual tests have to be applied to determine the true relation between the parts, branches, etc., namely, whether they constitute one integrated whole or not. No particular test can be adopted as an absolute test in all cases of this type and the word “establishment” is not to be given the sweeping definition of one organisation of which it is capable, but rather is to be construed in the ordinary

business or commercial sense.

For the reasons which we have already given, we are of the view that the learned chairman of the industrial tribunal wrongly held that the limestone quarry at Rajanka and the factory at Jhinkpani were separate establishments. In our view, they constituted one establishment within the meaning of Cl (iii) of S. 25E of the Act. It was conceded on behalf of the respondent workmen that the lay-off in the factory was due to the non-supply of limestone by reason of the strike in the limestone quarry and the strike was decided on by the same union which consisted of the workmen at the factory and the quarry. That being the position, the disqualification in Cl. (iii) aforesaid

clearly applied and the workmen at the factory were not entitled to claim lay-off compensation.

The result, therefore, is that the appeal succeeds and is allowed and the award of the industrial tribunal is set aside. In the circumstances of the case in which a difficult question of interpretation arose for decision for the first time, we pass no order as to costs."

21. Mr. Deshmukh assailed the impugned judgment on this very issue and submitted that the learned Single Judge has proceeded to examine the case merely on the basis of functional integrity which is one of the tests and cited decisions to demonstrate that in a given fact situation it may assume an important role for arriving at a decision as

to whether these two units were part of the same undertaking. However, Mr. C.U. Singh, the learned senior advocate appearing for the respondent employer, submitted that the learned Single Judge has examined the matter in detail and has come to the conclusion that the evidence on record clearly proved that these were two distinct units as the petitioner's product's trade mark was 'Borger' whereas the 'El-Ci-Ar' was the trade mark used by Respondent No. 41 i.e., the other unit Neotronics (P) Limited., and as they were producing different products, the Industrial Court has misdirected itself and has based its finding on excise certificate issued by the excise officers which also was not correct as Shekoba Auto Private Limpid was manufacturing plastic film capacitors whereas the Neotronics (P) Limited was manufacturing wire wound resistors and plastic film capacitors. What we find is that this fact has been dealt by the learned Single Judge in a very

casual way by observing that “in any event the excise certificate is only for revenue purpose and has nothing to do with the specific types of capacitors or the end usage of the same and as the witness for the employer has explained the line of production in his cross-examination and even if it is assumed that they were manufacturing same and similar product, it would not mean that the petitioner and the respondent no. 41 were functionally integrated.

22. One important aspect of the case which has been overlooked is that when one of the original two firms was converted into two companies i.e. Shekoba and Neotronics, the workmen were absorbed in the two companies. It has been tried to be canvassed before us that it was so done so as not to result in unemployment of the workmen and it is not necessarily indicative of the fact that the workmen were absorbed in the two companies, the two companies are part of

the same establishment. Further, the case of the respondent employer is to be understood in the backdrop that though the respondent, particularly in respect of Shekoba Auto Private Limited claims that in substance it was a closure but they did not declare it to be so but only resorted to retrenchment of their workmen on the pretext that manufacturing of product was discontinued due to want of orders and loss suffered by the company and, therefore, it was thought proper to retrench the workmen. Therefore, it is an admitted fact that Shekoba did not initiate any proceeding for closing down the undertaking.

23. The Industrial Court has in its judgment cited various reasons from the evidence and has come to a finding that after considering the history of the establishments of both the respondents that the companies are though manufacturing the products in two different brand names, they have done so through

an assignment deed and that Auto Component Company started its manufacturing activities of automobile ignition capacitors and was supplying these products to the manufacturers of two wheelers like Bajaj Auto Ltd., [A.P.I.](#) Hock Engines, Infield India, etc. and, therefore, the business of Respondent No. 1 was badly affected. So they started developing new product which was radio interference suppression capacitors, microwave oven capacitors, [C.D.I.](#), units etc. with investing huge sums but by 1995 due to industrial depression they further suffered loss and took a decision of closure of manufacturing unit with effect from 21st March, 1999. As regard the sharing of the premises, it has been admitted by the witness that there is no written lease regarding tenancy between the Respondent No. 1 and Respondent No. 2., and that they are closely knit units owned by the three families i.e. Bhats, Shenoy and Kamats who are inter-related. The learned Member of the Industrial

Court has also dwelt on the issue of functional integrity between the two establishments and in the back-drop of the various decisions starting from Associated Cement Company's case, Saurashtra Trust Karmachari Sangh has applied the specific test and found that all these tests considered by the Supreme Court in Associated Cement's case are complied and established by the complainants. It has specifically observed that on closure of manufacturing activities of Respondent No. 1, Respondent No. 2 unit is still going on. Having found that the Respondent No. 2 is not totally dependent on the manufacturing activities of Respondent No. 1 because of the fact that both of them are manufacturing their product independently and, therefore, the question of not surviving in absence of another in case of closure of one establishment cannot be accepted as a superior test in this particular case and found that though both the respondents were manufacturing independently but similar products, one

cannot conceal the fact that the management, finance, geographical proximity, unity of ownership trade mark, work force, were common for both Respondent Nos. 1 and 2.

24. The learned Single judge while dealing with the matter under Article 226 which leaves very limited scope has not given any finding to the effect that the factors considered by the member of the Industrial Court are either perverse or not germane to the issue. It is equally well settled that the decision of the Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution of India unless at the least it is shown to be fully unsupported by evidence.

25. The question as to whether the industrial establishments owned by the same management

constitute separate unit or one establishment has been considered by the Supreme Court on several occasions. In the case of **Management of Wenger & Co. v. Their Workmen**, (1963) 2 [S.C.R.](#) 862, where the Supreme Court was examining as to whether wine shops are part of hotel establishment observed as under:-

" The question as to whether industrial establishments owned by the same managements constitute separate units or one establishment has been considered by this Court on several occasions. Several factors are relevant in deciding this question. But it is important to bear in mind that the significance or importance of these relevant factors would not be the same in each case; whether or not the two units constitute one establishment or

are really two separate and independent units, must be decided on the facts of each case. Mr. Pathak contends that the Tribunal was in error in holding that the restaurants cannot exist without the wine shops and that there is functional integrality between them. It may be conceded that the observation of the tribunal that there is functional integrality between a restaurant and a wine shop and that the restaurants cannot exist without wine shops is not strictly accurate or correct. But the test of functional integrality or the test whether one unit can exist without the other, though important in some cases, cannot be stressed in every case without having regard to the relevant facts of that case, and so, we are not

prepared to accede to the argument that the absence of functional integrality and the fact that the two units can exist one without the other necessarily show that where they exist they are necessarily separate units and do not amount to one establishment. It is hardly necessary to deal with this point elaborately because this Court had occasion to examine this problem in several decisions in the past, *vide Associated Cement Companies Ltd. v. Their Workmen; Pratap Press, etc. v. Their Workmen; Pakshiraja Studios v. Its Workmen; South India Millowners' Association v. Coimbatore District Textile Worker' Union; Fine Knitting Co. Ltd. v. Industrial Court and D.C.M. Chemical Works v. Its Workmen.*”

Therefore, in the facts and circumstances of the case, we are of the clear view that the decision of the learned Member of the Industrial Court did not call for any interference.

26. Before we part with this appeal, we are required to quote a recent decision of the Supreme Court rendered in the case of **Union of India and Another vs. Major Bahadur Singh**, (2006) 1 SCC 368. wherein the Supreme Court has observed in paragraphs 9, 10, 11 and 12 of the reported judgment as under :-

“9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations

of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd., v. Harton* (1951) 2 All ER 1 (HL) Lord MacDermott observed:(All ER p. 14C-D)

10. In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294 Lord Reid (All ER p.297 g-h)

Megarry, J. in *Shepherd Homes Ltd., v. Sandham (No.2)* (1971) 2 All ER 1267 observed :)All ER p. 1274 d-e) """"One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;"" and,

in *Herrington v. British Railways Board*
(1972) All ER 749; Lord Morris said: (All
ER p.761c):

" There is always peril in treating
the words of a speech or a
judgment as though they were
words in a legislative enactment,
and it is to be remembered that
judicial utterances are made in the
setting of the facts of a particular
case."

"11. Circumstantial flexibility, one
additional or different fact may make a
world of difference between conclusion
in two cases. Disposal of cases by
blindly placing reliance on a decision is
not proper.

"12. The following words of Lord
Denning in the matter of applying
precedents have become locus

classicus:

“““ Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”””” ““““

27. Therefore, we quash and set aside the impugned judgment and order passed by the learned Single Judge and restore the judgment of

the learned Member of the Industrial Court. The appeal is allowed in the aforesaid terms with costs.

28. The learned counsel appearing for the respondent-employer submitted that this Court may stay the effect and operation of the judgment and order so as to enable the respondent-employer to approach the Supreme Court, if so advised. The learned counsel for the appellants have no objection if the interim arrangement is continued for the said period. Therefore, there will be stay to the effect and operation of this judgment and order for the period of eight weeks from today on the condition that they would continue to deposit the amounts as per the interim order passed by this Court during the pendency of the appeal.

(J.N. Patel, J.)

(A.A. Sayed, J.)